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PATENT APPLICATION

ATTORNEY DOCKET NO. ____200208699-2____

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s):   Stephan BRAUN et al.

Application No.: 10/688,979

Filing Date: October 21, 2003

Confirmation No.: 8110

Examiner: Brandon J. Miller

Group Art Unit: 2617

Title: METHOD AND APPARATUS FOR OPERATING A TELECOMMUNICATION PLATEFORM

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

<u>TRANSMITTAL OF APPEAL BRIEF</u>

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on ____August 6, 2008____.

[X] The fee for filing this Appeal Brief is $540.00 (37 CFR 41.20).

[ ] No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

[ ] (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

[ ] 1st Month $120   [ ] 2nd Month $460   [ ] 3rd Month $1050   [ ] 4th Month $1640

[ ] The extension fee has already been filed in this application.

[ ] (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of ____$ 540____. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

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Respectfully submitted,

Stephan BRAUN et al.

By_____

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Rev 10/07(AplBrief)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant:	Stephan BRAUN et al.
Title:	METHOD AND APPARATUS FOR OPERATING A TELECOMMUNICATION PLATFORM
Appl. No.:	10/688,979
Filing Date:	10/21/2003
Examiner:	Brandon J. Miller
Art Unit:	2617
Confirmation Number:	8110

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Under the provisions of 37 C.F.R. § 41.37, this Appeal Brief is being filed together with a deposit account 08-2025 authorization in the amount of $540.00 covering the 37 C.F.R. 41.20(b)(2) appeal fee. If this fee is deemed to be insufficient, authorization is hereby given to charge any deficiency (or credit any balance) to the undersigned deposit account 08-2025.

1. REAL PARTY IN INTEREST

The real party in interest is the assignee of record, Hewlett Packard Development Company, L.P.

2. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

3. STATUS OF CLAIMS

Claims 1-18 are pending in the application. Claims 1-18 are rejected and are the subject of this appeal.

4. STATUS OF AMENDMENTS

The present application is under a final rejection (See Final Rejection mailed June 13, 2008). Appeal of claims 1-18 is appropriate because all of these claims have been twice rejected. See 35 U.S.C. § 134(a).

5. SUMMARY OF CLAIMED SUBJECT MATTER

The invention of claim 1 is directed to a telecommunications platform (telecommunications platform 200 in FIG. 2) having a plurality of communications links (links 105 in FIG. 2), each link providing a certain amount of traffic capacity to a communications network (SS7 network 112 in FIG. 2), of which only a portion of the links to the communications network are enabled for use through the activation of a first base license key (specification, page 7, lines 23-27, page 8, lines 22-24). The telecommunications platform comprises: a licensing framework (licensing framework 209 in FIG. 2) for activating an upgrade license key to enable additional ones of the plurality of links to the communications network (specification, page 8, lines 26-33, page 9, lines 13-14) to increase the total amount of traffic capacity to the communications network (specification, page 7, lines 29-34); and a traffic monitoring element (usage monitor 204 in FIG. 2) for measuring the traffic level of the platform (specification, page 9, lines 21-25) and for generating data related to the measured traffic level for determining whether the number of links to the communications network which are used is greater than that provided for by the base license key (specification, page 10, lines 21-26, page 11, lines 1-14; FIG. 3).

The invention of claim 8 is directed to a method of operating a telecommunications platform (telecommunications platform 200 in FIG. 2) having a plurality of communications links (links 105 in FIG. 2), each link providing a certain amount of traffic capacity to a communications network (SS7 network 112 in FIG. 2), of which only a portion of the links to the communications network are enabled for use through the activation of a first base license key (specification, page 7, lines 23-27, page 8, lines 22-24). The method comprises: activating an upgrade license key to enable additional ones of the plurality of links to the communications network (specification, page 8, lines 26-33, page 9, lines 13-14) to increase the total amount of traffic capacity to the communications network (specification, page 7, lines 29-34); measuring the traffic level of the platform (specification, page 9, lines 21-25); and generating data related to the measured traffic level for determining whether the number of links to the communications network which are used is greater than that provided for by the base license key (specification, page 10, lines 21-26, page 11, lines 1-14; FIG. 3).

The invention of claim 15 is directed to a telecommunications platform (telecommunications platform 200 in FIG. 2) having a plurality of communications links (links 105 in FIG. 2), each link providing a certain amount of traffic capacity to a communications network (SS7 network 112 in FIG. 2), of which only a portion of the links to the communications network are enabled for use through the activation of a first base license key (specification, page 7, lines 23-27, page 8, lines 22-24). The telecommunications platform comprises: a licensing framework (licensing framework 209 in FIG. 2) for activating an upgrade license key to temporarily enable additional ones of the plurality of links to the communications network (specification, page 8, lines 26-33, page 9, lines 13-14) to increase the total amount of traffic capacity to the communications network (specification, page 7, lines 29-34).

The invention of claim 16 is directed to a telecommunications platform (telecommunications platform 200 in FIG. 2) having a plurality of available communications links (links 105 in FIG. 2), each link providing a certain amount of traffic capacity to a communications network (SS7 network 112 in FIG. 2), of which only a portion of the links to the communications network are enabled for use with the platform through the activation of a

first base license key (specification, page 7, lines 23-27, page 8, lines 22-24). The telecommunications platform comprises: a licensing framework (licensing framework 209 in FIG. 2) for activating an upgrade license key to enable additional ones of the plurality of links to the communications network (specification, page 8, lines 26-33, page 9, lines 13-14) to increase the total amount of traffic capacity to the communications network (specification, page 7, lines 29-34); and a traffic monitoring element (usage monitor 204 in FIG. 2) for measuring, in response to the activation of the upgrade license key, the traffic level of the platform (specification, page 9, lines 21-25) and for generating data related to the measured traffic level when it is determined that the measured traffic level is indicative that the number of links used is greater than that provided for by the base license key (specification, page 10, lines 21-26, page 11, lines 1-14; FIG. 3).

The invention of claim 17 is directed to a telecommunications platform (telecommunications platform 200 in FIG. 2) having a plurality of communications links (links 105 in FIG. 2), each link providing a certain amount of traffic capacity to a communications network (SS7 network 112 in FIG. 2), of which only a first portion of the links to the communications network are enabled for use (specification, page 7, lines 23-27, page 8, lines 22-24). The telecommunications platform comprises: a licensing framework (licensing framework 209 in FIG. 2) for activating an upgrade license key to enable additional ones of the plurality of links to the communications network (specification, page 8, lines 26-33, page 9, lines 13-14) to increase the total amount of traffic capacity to the communications network (specification, page 7, lines 29-34); and a traffic monitoring element (usage monitor 204 in FIG. 2) for measuring the traffic level of the platform (specification, page 9, lines 21-25) and for generating data related to the measured traffic level for determining whether the number of links to the communications network which are used exceeds the number in the first portion (specification, page 10, lines 21-26, page 11, lines 1-14; FIG. 3).

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are:

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(A) The rejection of claims 1-2, 7-9 and 14-17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,752,041 to Fosdick ("Fosdick") in view of U.S. Patent No. 6,732,181 to Lim et al. ("Lim"); and

(B) the rejection of claims 3-6, 10-13 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Fosdick in view of Lim, in further view of U.S. 2001/0037403 to Mougi et al. ("Mougi").

7. ARGUMENT

(A) The rejection of claims 1-2, 7-9 and 14-17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,752,041 to Fosdick ("Fosdick") in view of U.S. Patent No. 6,732,181 to Lim et al. ("Lim")

Independent claim 1 recites:

> A telecommunications platform having a plurality of communications links, each link providing a certain amount of traffic capacity to a communications network, of which only a portion of the links to the communications network are enabled for use through the activation of a first base license key, comprising:
> a licensing framework *for activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity* to the communications network; and
> a traffic monitoring element for measuring the traffic level of the platform and for generating data related to the measured traffic level for determining whether the number of links to the communications network which are used is greater than that provided for by the base license key.
> (emphasis added)

Thus, in claim 1, the licensing framework is for <u>activating an upgrade license key which enables additional links to the communications network to increase the total amount of traffic capacity</u> to the communications network. Fosdick and Lim fail to suggest at least this feature of claim 1 in the context of that claim.

Fosdick is directed to a system for licensing program management within a distributed processing system. The system allows users within one portion of the distributed data processing system 8 to utilize a licensed program which is controlled by use of tokens which may be stored within another portion of the distributed data processing system 8 (col. 3, line 65 – col. 4, line 2). The system employs a "usage limit" which is the maximum number of users which are authorized by a licensed program key protected license (col. 5, lines 26-28). A licensed program may go over the usage limit for a particular system by borrowing tokens from other systems within the network (col. 5, lines 28-32). In particular, Fosdick discloses the borrowing of tokens between two systems A and B within the distributed system for the use of a licensed program in FIGs. 5A-5H.

Fosdick, however, fails to disclose <u>activating an upgrade license key to enable additional communication links to increase the total amount of traffic capacity</u> to a communications network as recited in claim 1, where each communication link provides a certain amount of the <u>traffic capacity</u> to the communications network. Fosdick merely discloses a licensing program management system which manages the use of licensed programs that may be used by systems within a distributed data processing system by the borrowing back and forth of tokens. Fosdick does not disclose that the borrowing of tokens between systems within its distributed system <u>enables additional communication links</u> to increase the total amount of <u>traffic capacity</u> to its distributed data processing system or a system within the distributed system.

Even if the <u>traffic</u> to a system in Fosdick increases when that system borrows a token to increase the number of users that may use a licensed program, that is not the same as enabling additional communication links to increase the total amount of <u>traffic capacity</u> to that system. To the contrary, the <u>traffic capacity</u> to one of the systems in Fosdick does not appear to change when the number of users of a licensed program is increased in the system, and the number of enabled communication links affecting traffic capacity to the system is not disclosed as changing depending on the number of users of the licensed program in the system. Significantly, Fosdick does disclose a particular communication link 22 from computer 12 of LAN 10 to mainframe computer 18. Nowhere, however, does Fosdick

suggest that <u>the number of such links 22 is increased</u> to increase traffic capacity between the LAN 10 and the mainframe computer 18 depending on the number of users using a licensed program in the LAN. At best Fosdick discloses increasing the amount of <u>traffic</u> to a system when that system borrows a token to increase the number of users that may use a licensed program. Such an increase in traffic is not the same as enabling additional communication links to increase the total amount of <u>traffic capacity</u> to that system.

Lim was cited for allegedly disclosing a telecommunications platform and activating an upgrade license key, but fails to cure the deficiencies of Fosdick. Nowhere does Lim disclose or suggest "activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of <u>traffic capacity</u>" as recited in claim 1, and thus, even if Fosdick were combined with Lim, the combination fails to suggest all the features of claim 1. In particular with respect to Lim, the upgrading a system license based on a new application key as disclosed in col. 6, lines 56-57, has nothing to do with enabling additional links to a communications network to increase the total amount of <u>traffic capacity</u>.

Independent claims 8, 15, 16 and 17 respectively recite "activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network," "a licensing framework for activating an upgrade license key to temporarily enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network," "a licensing framework for activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network," and "a licensing framework for activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network," and thus are patentable for reasons analogous to claim 1.

Dependent claims 2, 7, 9 and 13 ultimately depend from independent claims 1 or 8, and are patentable for at least the same reasons, as well as for further patentable features recited therein.

(B) the rejection of claims 3-6, 10-13 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Fosdick in view of Lim, in further view of U.S. 2001/0037403 to Mougi et al. ("Mougi")

Dependent claims 3-6, 10-13 and 18 ultimately depend from independent claims 1 or 8, and thus inherit their features by dependency. As discussed above, Fosdick and Lim do not suggest the feature of claim 1 (with a corresponding feature in method claim 8) of "a licensing framework <u>for activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity</u> to the communications network." Mougi was cited for other features of the claims, but fails to cure the deficiencies of Fosdick and Lim. Thus, dependent claims 3-6, 10-13 and 18 ultimately depend from independent claims 1 or 8, and are patentable for at least the same reasons, as well as for further patentable features recited therein.

For the foregoing reasons, it is submitted that the PTO's rejections are erroneous, and reversal of the applied rejections is respectfully requested.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 C.F.R. § 1.25. Additionally, charge any fees to Deposit Account 08-2025 under 37 C.F.R. § 1.16 through § 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

Respectfully submitted,

Date _October 6, 2008_   By _____

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8. CLAIMS APPENDIX

1.   (Previously Presented) A telecommunications platform having a plurality of communications links, each link providing a certain amount of traffic capacity to a communications network, of which only a portion of the links to the communications network are enabled for use through the activation of a first base license key, comprising:

a licensing framework for activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network; and

a traffic monitoring element for measuring the traffic level of the platform and for generating data related to the measured traffic level for determining whether the number of links to the communications network which are used is greater than that provided for by the base license key.

2.   (Previously Presented) A telecommunications platform according to claim 1, wherein the traffic monitoring element is enabled for use by the licensing framework upon the activation of the upgrade license key.

3.   (Previously Presented) A telecommunications platform according to claim 1, wherein the upgrade license key has a time-limited validity period, and further comprising a license enforcement element for deactivating the plurality of links enabled by the activation of the upgrade license key upon the expiry of the validity period.

4.   (Original) A telecommunications platform according to claim 3, wherein the license enforcement element is arranged to progressively deactivate the plurality of links over a predefinable time period.

5.   (Original) A telecommunications platform according to claim 3, wherein the license enforcement element is arranged to deactivate all of the plurality of links immediately upon expiry of the upgrade license key.

6.   (Previously Presented) A telecommunications platform according to claim 3, wherein the license enforcement element is adapted to deactivate use of the traffic monitoring element upon expiry of the upgrade license key.

7.   (Previously Presented) A telecommunications platform according to claim 1, further comprising a replicated telecommunications platform connected in a high availability arrangement through a high-availability framework.

8.   (Previously Presented) A method of operating a telecommunications platform having a plurality of communications links, each link providing a certain amount of traffic capacity to a communications network, of which only a portion of the links to the communications network are enabled for use through the activation of a first base license key, comprising:

activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network;

measuring the traffic level of the platform; and

generating data related to the measured traffic level for determining whether the number of links to the communications network which are used is greater than that provided for by the base license key.

9.   (Original) A method according to claim 8, wherein the step of measuring is adapted to commence measuring the traffic level in response to the activation of the upgrade license key.

10.   (Previously Presented) A method according to claim 8, wherein the upgrade license key has a time-limited validity, and further comprising deactivating the plurality of links enabled by the activation of the upgrade license key upon the expiry of the upgrade license key.

11.   (Original) A method according to claim 10, wherein the step of deactivating the links is arranged to progressively deactivate the plurality of links over a predefinable time period.

12.   (Original) A method according to claim 10, wherein the step of deactivating the links is arranged to immediately deactivate all of the links upon expiry of the upgrade license key.

13.   (Previously Presented) A method according to claim 10, wherein the step of deactivating further comprises suspending the monitoring of the traffic levels upon expiry of the upgrade license key.

14.   (Previously Presented) A method according to claim 8, further comprising replicating the telecommunications platform through a high-availability framework.

15.   (Previously Presented) A telecommunications platform having a plurality of communications links, each link providing a certain amount of traffic capacity to a communications network, of which only a portion of the links to the communications network are enabled for use through the activation of a first base license key, comprising:

a licensing framework for activating an upgrade license key to temporarily enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network.

16.   (Previously Presented) A telecommunications platform having a plurality of available communications links, each link providing a certain amount of traffic capacity to a communications network, of which only a portion of the links to the communications network

are enabled for use with the platform through the activation of a first base license key, comprising:

a licensing framework for activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network; and

a traffic monitoring element for measuring, in response to the activation of the upgrade license key, the traffic level of the platform and for generating data related to the measured traffic level when it is determined that the measured traffic level is indicative that the number of links used is greater than that provided for by the base license key.

17.   (Previously Presented) A telecommunications platform having a plurality of communications links, each link providing a certain amount of traffic capacity to a communications network, of which only a first portion of the links to the communications network are enabled for use, comprising:

a licensing framework for activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network; and

a traffic monitoring element for measuring the traffic level of the platform and for generating data related to the measured traffic level for determining whether the number of links to the communications network which are used exceeds the number in the first portion.

18.   (Previously Presented) A telecommunications platform according to claim 1, wherein the upgrade license key has a time-limited validity period, and wherein the traffic

monitoring element is configured to be enabled, in response to the activation of the upgrade license key, for the duration of the validity period.

9. <u>EVIDENCE APPENDIX</u>

None

10. <u>RELATED PROCEEDINGS APPENDIX</u>

None